

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
UNITED STATES OF AMERICA,	:
	:
-v-	:
	:
	:
ANDREW DONE,	:
	:
	:
Defendant.	:
	:
-----X	

22-cr-192-1 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

Andrew Done pleaded guilty to one count of racketeering conspiracy on November 17, 2022. See ECF No. 101. On February 22, 2023, the Court sentenced Done to, inter alia, 420 months' imprisonment. See ECF No. 152. Done filed a notice of appeal of the criminal judgment on March 9, 2023, ECF No. 153, which remains pending. In July 2023, however, Done wrote to the Court claiming his guilty plea had been coerced and asking the Court to order discovery from his attorneys. See ECF No. 165. The Court construes Done's letter as a motion to withdraw his guilty plea, to which the Government submitted a response on August 2, 2023. ECF No. 166.

Even if the Court were to credit the allegations in Done's letter, the Court lacks jurisdiction to grant relief. In criminal and civil cases alike, "a notice of appeal confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." United

States v. Jacques, 6 F.4th 337, 343-44 (2d Cir. 2021).¹ “It is not tolerable to have a district court and a court of appeals simultaneously analyzing the same judgment, i.e., to have situations in which district courts and courts of appeals would both have the power to modify the same judgment.” Id. at 342.

The Federal Rules of Criminal Procedure nevertheless allow the Court to deny a “motion . . . made for relief that the court lacks authority to grant because of an appeal that has been docketed and pending.” Fed. R. Crim. P. 37(a)(2). The Court thus denies Done’s motion, ECF No. 165, without prejudice. See Green v. Dep’t of Educ. of N.Y., 16 F.4th 1070, 1074 (2d Cir. 2021) (“When subject matter jurisdiction is lacking, the district court lacks the power to adjudicate the merits of the case.”). Should Done wish, he may seek to set aside his plea on direct appeal. See Fed. R. Crim. P. 11(e).

SO ORDERED.

Dated: New York, NY
August 16, 2023


JED S. RAKOFF, U.S.D.J.

¹ Here and elsewhere, alterations, internal citations, and quotation marks are omitted unless otherwise indicated.